

# PROPOSED 2004 NORTH DAKOTA ADMINISTRATIVE CODE CHANGES

## GENERAL RULES AND REGULATIONS CHAPTER 43-02-03

**43-02-03-05. ENFORCEMENT OF LAWS, RULES, AND REGULATIONS DEALING WITH CONSERVATION OF OIL AND GAS.** The commission, its agents, representatives, and employees are charged with the duty and obligation of enforcing all rules and statutes of North Dakota relating to the conservation of oil and gas. However, it shall be the responsibility of all the owners or operators to obtain information pertaining to the regulation of oil and gas before operations have begun.

The director may shut in, for no more than forty days, any well that is likely to cause a serious threat of pollution or injury to the public health or safety.

History: Amended effective \_\_\_\_\_.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

### **43-02-03-15. BOND AND TRANSFER OF WELLS.**

1. Bond requirements. Prior to commencing drilling operations, any person who proposes to drill a well for oil, gas, or injection shall submit to the commission, and obtain its approval, a surety bond or cash bond. ~~in a~~ An alternative form of security may be approved by the commission after notice and hearing, conditioned as provided by law. The operator of such well shall be the principal on the bond covering the well. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.
2. Bond amounts and limitations. The bond shall be in the amount of fifteen thousand dollars when applicable to one well only. Wells drilled to a total depth of less than two thousand feet [609.6 meters] may be bonded in a lesser amount if approved by the director. When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a bond conditioned as provided by law. A blanket bond covering ten wells or less shall be in the amount of fifty thousand dollars provided the bond shall be limited to no more than five of the following in aggregate and a blanket bond covering more than ten wells shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to no more than ten of the following in aggregate:
  - a. A well that is a dry hole and is not properly plugged;
  - b. A well that is plugged and the site is not properly reclaimed; and
  - c. A well that is abandoned pursuant to section 43-02-03-55 and is not properly plugged and the site is not properly reclaimed.

If this aggregate of wells is reached, all well permits, for which drilling has not commenced, held by the principal of such bond are suspended. No rights may be

exercised under the permits until the aggregate of wells drops below the required limit, or the operator files the appropriate bond to cover the permits, at which time the rights given by the drilling permits are reinstated. A well with an approved temporary abandoned status shall have the same status as an oil, gas, or injection well. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the well or wells and the expected cost of plugging and well site reclamation, as determined by the commission. The commission may refuse to accept a bond or to add wells to a blanket bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

3. Unit bond requirements. Prior to commencing unit operations, the operator of any area under unitized management shall submit to the commission, and obtain its approval, a surety bond or cash bond. ~~in a~~ An alternative form of security may be approved by the commission after notice and hearing, conditioned as provided by law. The operator of the unit shall be the principal on the bond covering the unit. The amount of the bond shall be specified by the commission in the order approving the plan of unitization. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

Prior to transfer of a unit to a new operator, the commission, after notice and hearing, may revise the bond amount for a unit, or in the case when the unit was not previously bonded, the commission may require a bond and set a bond amount for the unit.

4. Bond terms. ~~The bond herein required~~ Bonds shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and all administrative rules and orders of the commission. It shall be a plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging of all oil, gas, and injection wells as well as dry holes. Approved plugging shall also include practical reclamation of the well site and appurtenances thereto. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
5. Transfer of wells under bond. Transfer of property does not release the bond. In case of transfer of property or other interest in the well and the principal desires to be released from the bond covering the well, such as producers, not ready for plugging, the principal ~~should~~ must proceed as follows:
  - a. The principal must notify the director, in writing, of all proposed transfers of wells at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.

The principal shall submit to the commission a form 15 reciting that a certain well, or wells, describing each well by quarter-quarter, section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized to sign on behalf of the principal.

On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under the transferee's one-well bond or, as the case may

be, does accept the responsibility of such wells under the transferee's blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

- b. When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of plugging the well and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if the well is in violation of a statute, rule, or order.
  - c. The transferee (new operator) of any oil, gas, or injection well, shall be responsible for the plugging and site reclamation of any such well. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such well. ~~This section shall apply to transfers of any such wells made prior to the effective date of this section as well as thereafter.~~ The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such wells is completed and approved.
6. Treating plant bond. Prior to the commencement of operations, any person proposing to operate a treating plant must submit to the commission and obtain its approval, ~~of a surety bond,~~ or cash bond. An alternative form of security may be approved by the commission after notice and hearing, conditioned as provided by law. The person responsible for the operation of the plant shall be the principal on the bond. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-51. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
  7. Bond termination. The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.
  8. Director's authority. The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which may only be approved by the commission.

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; December 1, 1996; September 1, 2000; July 1, 2002;\_\_\_\_\_.

**43-02-03-16.3. RECOVERY OF A RISK PENALTY.** The following govern the recovery of the risk penalty ~~of~~ pursuant to subsections 3 of North Dakota Century Code sections 38-08-08 and 38-08-09.4:

1. An owner may recover the risk penalty under the provisions of Section 38-08-08(3), provided the owner gives, to the owner from whom the penalty is sought, a written invitation authorization for expenditure or other request to participate in the risk and cost of drilling a new well or the risk and cost of reentering an existing well to drill deeper or a horizontal lateral. If the nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty must also make a good-faith attempt to have the unleased owner execute a lease.
2. ~~a.~~ The invitation authorization for expenditure or request to participate in drilling must contain the following:
  - ~~a.~~ (1) The location of the proposed or existing well and its proposed depth and objective zone.
  - ~~b.~~ (2) An itemization of the estimated costs of drilling and completion.
  - ~~c.~~ (3) The approximate date upon which the well will be spudded or reentered.
  - ~~d.~~ (4) The time within which the invitation request must be accepted. At least thirty days should be given, for it is presumed that at least thirty days is needed to adequately consider and respond to an invitation request. In unusual circumstances, however, the owner seeking the risk penalty may allow less than thirty days in which to respond to the invitation request, but in no circumstances may less than fifteen days be allowed.
- 3 ~~—b.~~ An valid acceptance of the invitation election to participate must be in writing.
- 4 ~~—c.~~ An invitation request to participate and an acceptance of the invitation election to participate must be served personally, by mail requiring a signed receipt, by facsimile transmission followed within one business day by mailing, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.
- 5 ~~—d.~~ An election to participate is only binding upon an owner electing to participate if the well is spudded or reentry operations are commenced within ninety days after the date the owner extending the invitation request to participate sets as the date upon which a response to the invitation request is to be received. It also expires if the permit to drill or reenter expires without having been exercised. If an election to participate

lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.

~~6. The right to a risk penalty expires if the owner seeking it does not spud the well within ninety days after the date set by the owner as the date upon which a response to the invitation is to be received. It also expires if the permit to drill expires without having been exercised.~~

2. An owner may recover the risk penalty under the provisions of Section 38-08-09.4(3), provided the owner gives, to the owner from whom the penalty is sought, a written authorization for expenditure or other request to participate in the unit expense. If the nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty must also make a good-faith attempt to have the unleased owner execute a lease.

a. The authorization for expenditure or request to participate in the unit expense must contain the following:

(1) A description of the proposed unit expense, including the location, objectives, and plan of operation.

(2) An itemization of the estimated costs.

(3) The approximate date upon which the proposal will commence.

(4) The time within which the request must be accepted. At least thirty days should be given, for it is presumed that at least thirty days is needed to adequately consider and respond to a request. In unusual circumstances, however, the owner seeking the risk penalty may allow less than thirty days in which to respond to the request, but in no circumstances may less than fifteen days be allowed.

b. An election to participate must be in writing.

c. A request to participate and an election to participate must be served personally, by mail requiring a signed receipt, by facsimile transmission followed within one business day by mailing, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.

d. An election to participate is only binding upon an owner electing to participate if the unit expense is commenced within ninety days after the date the owner extending the invitation request to participate sets as the date upon which a response to the request invitation is to be received. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.

3 7. Upon its own motion or the request of a party, the commission may include in a pooling order requirements relating to the ~~invitation~~ request and election to participate, in which case the pooling order will control to the extent it is inconsistent with this section.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
38-08-08

**43-02-03-21. CASING, TUBING, AND CEMENTING REQUIREMENTS.** All wells drilled for oil, natural gas or injection shall be completed with strings of casing which shall be properly cemented at sufficient depths to adequately protect and isolate all formations containing water, oil or gas or any combination of these; protect the pipe through salt sections encountered; and isolate the ~~Dakota-Lakota series~~ uppermost sand of the Dakota Group.

Drilling of the surface hole shall be with freshwater-based drilling mud or other method approved by the director which will protect all freshwater-bearing strata. The surface casing shall consist of new or reconditioned pipe that has been previously tested to one thousand pounds per square inch [6900 kilopascals]. The surface casing shall be set and cemented at a point not less than fifty feet [15.24 meters] below the base of the Fox Hills formation. Sufficient cement shall be used on surface casing to fill the annular space behind the casing to the bottom of the cellar, if any, or to the surface of the ground. All strings of surface casing shall stand cemented under pressure for at least twelve hours before drilling the plug or initiating tests. The term "under pressure" as used herein shall be complied with if one float valve is used or if pressure is otherwise held. Cementing shall be by the pump and plug method or other methods approved by the director.

Surface casing strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least three hundred fifty pounds per square inch [2415 kilopascals] within seventy-two hours. All compressive strengths on surface casing cement shall be calculated at a temperature of eighty degrees Fahrenheit [26.67 degrees Celsius].

Production or intermediate casing strings shall consist of new or reconditioned pipe that has been previously tested to two thousand pounds per square inch [13800 kilopascals]. Such strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five hundred pounds per square inch [3450 kilopascals] within seventy-two hours. All compressive strengths on production or intermediate casing cement shall be calculated at a temperature found in the Mowry formation using a gradient of 1.2 degrees Fahrenheit per one hundred feet [30.48 meters] of depth plus eighty degrees Fahrenheit [26.67 degrees Celsius]. After cementing, the casing shall be tested by application of pump pressure of at least one thousand five hundred pounds per square inch [10350 kilopascals]. If, at the end of thirty minutes, this pressure has dropped one hundred fifty pounds per square inch [1035 kilopascals] or more, the casing shall be repaired. Thereafter, the casing shall again be tested in the same manner. Further work shall not proceed until a satisfactory test has been obtained. The casing in a horizontal well may be tested by use of a mechanical tool set near the casing shoe after the horizontal section has been drilled.

All flowing wells must be equipped with tubing, ~~and~~ A tubing packer must also be utilized unless a waiver is obtained after demonstrating the casing will not be subjected to excessive pressure or corrosion. The packer must be set as near the producing interval as practicable, but in all cases must be above the perforations.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; January 1, 1997; September 1, 2000; July 1, 2002;\_\_\_\_\_.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-22. DEFECTIVE CASING OR CEMENTING.** In any well that appears to have defective casing or cementing, the operator shall report the defect to the director on a sundry notice (form 4) ~~and shall~~. Prior to attempting remedial work on any casing, the operator must obtain approval from the director and proceed with diligence to conduct tests, as approved or required by the director, to properly evaluate the condition of the well bore and correct the defect. The director may allow the well bore condition to remain if correlative rights can be protected without endangering potable waters. The well shall be properly plugged if requested by the director.

Any well with open perforations above a packer shall be considered to have defective casing.

History: Amended effective January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002;\_\_\_\_\_.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-48.1. CENTRAL PRODUCTION FACILITY - COMMINGLING OF PRODUCTION.**

1. The director shall have the authority to approve requests to consolidate production equipment at a central location.
2. Commingling of production from two or more wells in a central production facility is prohibited unless approved by the director. There are two types of central production facilities in which production from two or more wells is commingled that may be approved by the director.
  - a. A central production facility in which all production going into the facility has common ownership (working interests, royalty interests, and overriding royalties).
  - b. A central production facility in which production going into the facility has diverse ownership.
3. The commingling of production in a central production facility from two or more wells having common ownership may be approved by the director provided the production from each well can be accurately determined at reasonable intervals. Commingling of production in a central production facility from two or more wells having diverse ownership may be approved by the director provided the production from each well is accurately metered prior to commingling. Commingling of production in a central production facility from two or more wells having diverse ownership that is not metered prior to commingling may only be approved by the commission after notice and hearing.

- a. Common ownership central production facility. The application for permission to commingle oil and gas in a central production facility with common ownership must be submitted on a sundry notice (form 4) and shall include the following:
- (1) A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well and flow lines from each well that will produce into the facility.
  - (2) A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., should be shown.
  - (3) ~~A current or most recent division order or title opinion showing the ownership of each well to be commingled.~~ An affidavit executed by a person who has knowledge as to the state of title indicating ownership is common.
  - (4) An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method shall be performed at least once every three months.

A copy of all tests are to be filed with the director on form 11 within thirty days after the tests are completed.

- b. Diverse ownership central production facility. The application for permission to commingle oil and gas in a central production facility having diverse ownership must be submitted on a sundry notice (form 4) and shall include the following:
- (1) A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well, and flow lines from each well that will produce into the facility.
  - (2) A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., should be shown.
  - (3) The name of the manufacturer, size, and type of meters to be used. The meters must be proved at least once every three months and the results reported to the director within thirty days following the completion of the test.
  - (4) An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method shall be performed monthly.

A copy of all tests are to be filed with the director on form 11 within thirty days after the tests are completed.

4. Any changes to a previously approved central production facility must be reported on a sundry notice (form 4) and approved by the director.

History: Effective May 1, 1992; September 1, 2000;\_\_\_\_\_.



**43-02-03-49. OIL SPILLS, PRODUCTION EQUIPMENT TANKS, DIKES, AND SEALS.** Storage of oil in underground or partially buried tanks or containers is prohibited. ~~Oil may be stored in~~ Surface oil tanks ~~providing they are~~ and production equipment must be devoid of leaks and in good condition. Unusable tanks and production equipment must be removed from the site or repaired and placed into service within a reasonable time period, not to exceed one year. Dikes must be erected and maintained around oil tanks at any production facility built or rebuilt on or after July 1, 2000.

Dikes must be erected around oil tanks at any new production facility within thirty days after the well has been completed. Dikes must be erected and maintained around oil tanks at production facilities built prior to July 1, 2000, when deemed necessary by the director. Dikes must be constructed of sufficiently impermeable material to provide emergency containment and of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction.

At no time shall oil be allowed to flow over or pool on the surface of the land or infiltrate the soil. Discharged oil must be properly removed and may not be allowed to remain standing within or outside of any diked areas.

Numbered metal security seals shall be properly utilized on all oil access valves and access points to secure the tank or battery of tanks.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002;\_\_\_\_\_.

**43-02-03-50. TANK CLEANING PERMIT.** No tank bottom waste shall be removed from any tank used for the storage or sale of crude oil ~~or a tank in which crude oil accumulates~~ without prior approval by the director. Verbal approval may be given. ~~All tank bottom waste must be disposed of in a manner authorized by the director and in accordance with all applicable local, state, and federal laws and regulations.~~ Prior approval to remove tank bottom waste from tanks not used for the storage or sale of crude oil is not required.

Within thirty days of ~~completion~~ the removal of the tank bottom ~~cleaning~~, waste of any tank used for the storage or sale of crude oil, the owner or operator shall submit a report (form 23) showing an accurate gauge of the contents of the tank and the amount of merchantable oil determinable from a representative sample of the tank bottom by the standard centrifugal test as prescribed by the American petroleum institute's code for measuring, sampling, and testing crude oil.

Within thirty days of the removal of the tank bottom waste of any permanent tank not used for the storage or sale of crude oil, the owner or operator shall submit a sundry notice (form 4) detailing the cleaning operation.

All tank bottom waste must be disposed of in a manner authorized by the director and in accordance with all applicable local, state, and federal laws and regulations. Nothing contained in this section shall apply to reclaiming of pipeline break oil or the treating of tank bottoms at a pipeline station, crude oil storage terminal, or refinery or to the treating by a gasoline plant operator of oil and other catchings collected in traps and drips in the gas gathering lines connected to gasoline plants and in scrubbers at such plants.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; September 1, 2000;\_\_\_\_\_.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

### **43-02-03-53. SALTWATER HANDLING FACILITIES.**

1. All saltwater liquids or brines produced with oil and natural gas shall be processed, stored, and disposed of without pollution of freshwater supplies. At no time shall saltwater liquids or brines be allowed to flow over or pool on the surface of the land or infiltrate the soil.
2. Underground ~~disposal~~ injection of saltwater liquids and brines shall be in accordance with chapter 43-02-05.
3. Surface ~~tanks~~ facilities are ~~an~~ acceptable ~~facility~~ provided that:
  - a. They are devoid of leaks and constructed of materials resistant to the effects of produced saltwater liquids, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition. Unusable tanks and injection equipment must be removed from the site or repaired and placed into service within a reasonable time period, not to exceed one year.
  - b. Dikes must be erected and maintained around saltwater tanks at any saltwater handling facility built or rebuilt on or after July 1, 2000. Dikes must be erected around saltwater tanks at any new facility within thirty days after the well has been completed. Dikes must be erected and maintained around saltwater tanks at saltwater handling facilities built prior to July 1, 2000, when deemed necessary by the director. Dikes must be constructed of sufficiently impermeable material to provide emergency containment and of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. Discharged saltwater liquids or brines must be properly removed and may not be allowed to remain standing within or outside of any diked areas.
4. The operator shall take steps to minimize the amount of solids stored at the facility.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002;\_\_\_\_\_.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-60.1. VALUATION OF FLARED GAS.** The value of gas flared from an oil well in violation of North Dakota Century Code section 38-08-06.4 ~~must~~ shall be ~~deemed ninety-five cents per thousand cubic feet [28.32 cubic meters] (MCF). This valuation will be periodically reviewed by the industrial commission~~ determined by the commission after notice and hearing.

History: Effective October 1, 1990; amended effective May 1, 1992; May 1, 1994;\_\_\_\_\_.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-06.4

**43-02-03-88.1. SPECIAL PROCEDURES FOR POOLING, FLARING EXEMPTION, UNDERGROUND INJECTION, COMMINGLING, CONVERTING MINERAL WELLS TO FRESHWATER WELLS, AND CENTRAL TANK BATTERY OR CENTRAL PRODUCTION FACILITIES APPLICATIONS.**

1. Applications for pooling under North Dakota Century Code section 38-08-08, for a flaring exemption under North Dakota Century Code section 38-08-06.4 and section 43-02-03-60.2, for underground injection under chapter 43-02-05, for commingling in one well bore the fluids from two or more pools under section 43-02-03-42, for converting a mineral well to a freshwater well under section 43-02-03-35, and for establishing central tank batteries or central production facilities under section 43-02-03-48.1, must be ~~accompanied by an affidavit~~ signed by the applicant or the applicant's representative. The ~~affidavit~~ application must contain or refer to attachments that contain all the information required by law as well as ~~all~~ the information the applicant wants the commission to consider in deciding whether to grant the application. The ~~affidavit~~ application must designate an employee or representative of the applicant to whom the commission can direct inquiries regarding the application. ~~Two copies of the application and affidavit and any accompanying materials must be submitted, unless the director consents to fewer copies.~~
2. The applications referred to in subsection 1 will be advertised and scheduled for hearing as are all other applications received by the commission. The applicant, however, unless required by the director, need not appear at the hearing scheduled to consider the application, although additional evidence may be submitted prior to the hearing. ~~The affidavit referred to in subsection 1 will be made an exhibit in the case unless the applicant fails to appear at the hearing after requested to do so by the director.~~ Any interested party may appear at the hearing to oppose or comment on the application. Any interested party may also submit written comments on or objections to the application prior to the hearing date. Such submissions ~~will~~ may be part of the record in the case.
3. The director is authorized, on behalf of the commission, to grant or deny the applications referred to in subsection 1.

4. In any proceeding under this section, the applicant, at the hearing, may supplement the ~~affidavit required in subsection 1~~ record by offering testimony and exhibits in support of the application.
5. In the event the applicant is not required by the director to appear at the hearing and an interested party does appear to oppose the application or submits a written objection to the application, the hearing officer shall continue the hearing to a later date, keep the record open for the submission of additional evidence, or take any other action necessary to ensure that the applicant, who does not appear at the hearing as the result of subsection 2, is accorded due process.

History: Effective May 1, 1992; amended effective May 1, 1994; \_\_\_\_\_.

General Authority  
NDCC 38-08-04  
38-08-11

Law Implemented  
NDCC 38-08-04  
38-08-08

**43-02-03-88.2. HEARING PARTICIPANTS BY TELEPHONE.** In any hearing, the commission may, at its option, allow telephonic communication of witnesses and interested parties. The procedure shall be as follows:

1. Telephonic communication of an applicant's witness will only be considered if a written request is made at ~~the time the application is filed with the commission~~ least two business days prior to the hearing date.
2. Telephonic communication of an interested party will only be considered if said party notifies the applicant and the commission in writing at least three business days prior to the hearing date. Such notice shall include the subject hearing, the name and telephone number of the ~~participant~~ interested party, and the name and telephone number of the ~~applicant's~~ interested party's attorney or representative that will be present at the hearing.
3. In the event an objection to any party's telephonic communication is received, the examiner may disallow such communication by telephone and may reschedule for an in-person hearing. The commission will notify all parties whether or not the request to participate by telephone is granted or denied.
4. All parties participating by telephone shall have an attorney or representative present at the hearing who shall be responsible for actually calling said party once the case is called for hearing, for providing the commission at the time of the hearing with any documentary evidence requested to be included in the record, and for any other matters necessary for the party to participate by telephone.
5. All parties participating by telephone shall file an affidavit verifying the identity of such party. The record of such telephonic communication shall not be considered evidence in the case unless said affidavit is received by the examiner prior to an order being issued by the commission. The commission shall provide a form affidavit. The commission has the discretion to refuse to consider all or any part of the information received from any party participating by telephone.

6. For all hearings allowing communication by telephone, the commission shall provide a hearing room equipped with a speaker telephone.
7. The cost of telephonic communication shall be paid by the party requesting its use.

History: Effective July 1, 2002; amended effective \_\_\_\_\_.

General Authority  
NDCC 38-08-11

Law Implemented  
NDCC 28-32-11

**43-02-03-90.1. INVESTIGATORY HEARINGS.** The commission may hold investigatory hearings upon the institution of a proceeding by application or by motion of the commission. Notice of the hearing must be served upon all parties personally or by certified mail at least five days before the hearing.

History: Effective May 1, 1992; amended effective \_\_\_\_\_.

General Authority  
NDCC ~~28-32-08~~ 38-08-04

Law Implemented  
NDCC ~~28-32-08~~ 38-08-04

**UNDERGROUND INJECTION CONTROL**  
**CHAPTER 43-02-05**

**43-02-05-04. PERMIT REQUIREMENTS.**

1. No underground injection may be conducted without obtaining a permit from the industrial commission after notice and hearing. ~~An application for a permit for underground injection shall be submitted to the commission at least thirty days prior to the hearing.~~ The application shall be on a form 14 provided by the commission and shall include at least the following information:
  - a. The name and address of the operator of the injection well.
  - b. The surface and bottom hole location.
  - c. Appropriate geological data on the injection zone and the confining zones including geologic names, lithologic descriptions, thicknesses, and depths.
  - d. The estimated bottom hole fracture pressure of the top confining zone.
  - e. Average and maximum daily rate of fluids to be injected.
  - f. Average and maximum requested surface injection pressure.
  - g. Geologic name and depth to base of ~~all~~ the lowermost underground sources of drinking water which may be affected by the injection.
  - h. Existing or proposed casing, tubing, and packer data.
  - i. A plat depicting the area of review; ~~(one-fourth-mile~~ one-quarter mile [402.34-meter] radius) and detailing the location, well name, and operator of all wells in the area of review. The plat should include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults, if known or suspected.
  - j. ~~A tabulation of data on all wells of public record within the area of review that penetrated the proposed injection zone. Include the following data: location, date drilled, total depth, well type, construction, record of plugging or completion, and any additional information the commission may require.~~

The need for corrective action on wells penetrating the injection zone in the area of review.
  - k. Proposed injection program.
  - l. Quantitative analysis from a state-certified laboratory of freshwater from the two nearest freshwater wells within a one-mile radius. Location of the wells by quarter-quarter, section, township, and range must also be submitted. This requirement may be waived by the director in certain instances.

- m. Quantitative analysis from a state-certified laboratory of a representative sample of water to be injected. A compatibility analysis with the receiving formation may also be required.
- n. List identifying all source wells or sources of injectate.
- o. A legal description of the land ownership within the area of review.
- p. An affidavit of mailing certifying that all landowners within the area of review have been notified of the proposed injection well. If the proposed injection well is within an area permit authorized by a commission order, the notice shall inform the landowners within the area of review that comments or objections may be submitted to the commission within thirty days. If the proposed injection well is not within an area permit authorized by a commission order, the notice shall inform the landowners within the area of review that a hearing will be held at which comments or objections may be directed to the commission. A copy of the letter sent to each landowner must be attached to the affidavit.
- q. All logging and testing data on the well which has not been previously submitted.
- r. Schematic drawings of the injection system, including current well bore construction and proposed well bore and surface facility construction.
- s. Sundry notice detailing the proposed procedure.
- Permits may contain such terms and conditions as the commission deems necessary.
  - Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit or any applicable rule or statute.
  - Before a permit for underground injection will be issued, the applicant must satisfy the commission that the proposed injection well will not endanger any underground source of drinking water.
  - No person shall commence construction of an underground injection well until the commission has issued a permit for the well.
  - Permits are transferable only with approval of the commission.
  - Permits may be modified by the commission.
  - ~~Before a permit for underground injection will be issued~~ injection commences in an underground injection well, the applicant must complete any needed corrective action on wells penetrating the injection zone in the area of review.
  - All injection wells permitted before November 1, 1982, shall be deemed to have a permit for purposes of this section; however, all such prior permitted wells are subject to all other requirements of this chapter.
  - A permit shall automatically expire one year after the date it was issued, unless operations have commenced to complete the well as an injection well.

11. If the permitted injection zone is plugged and abandoned, the permit shall expire and be of no further force and effect.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 1994; July 1, 1996; \_\_\_\_\_.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

#### **43-02-05-06. CONSTRUCTION REQUIREMENTS.**

1. All injection wells shall be cased and cemented to prevent movement of fluids into or between underground sources of drinking water. The casing and cement used in construction of each new injection well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, all of the following factors shall be considered:
  - a. Depth to the injection zone.
  - b. Depth to the bottom of all underground sources of drinking water.
  - c. Estimated maximum and average injection pressures.
  - d. Fluid pressure.
  - e. Estimated fracture pressure.
  - f. Physical and chemical characteristics of the injection zone.
2. Appropriate logs and other tests shall be conducted during the drilling and construction of injection wells. Any well drilled or converted to an injection well shall have a log run from which the quality of the cement bond can be determined. Cement bond logs shall contain at least the following elements: a gamma ray curve; a casing collar locator curve; a transit time curve; an amplitude curve; and a variable density curve. A descriptive report interpreting the results of these logs and tests shall be prepared by a qualified log analyst and submitted to the commission if deemed necessary by the director.
3. All injection wells must be equipped with tubing and packer set at a depth approved by the director.

History: Effective November 1, 1982; amended effective May 1, 1992; July 1, 1996; \_\_\_\_\_.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)



#### **43-02-05-07. MECHANICAL INTEGRITY.**

1. Prior to commencing operations, the operator of a new injection well must demonstrate the mechanical integrity of the well. All existing injection wells must demonstrate continual mechanical integrity and be tested at least once every five years. An injection well has mechanical integrity if:
  - a. There is no significant leak in the casing, tubing or packer.
  - b. There is no significant fluid movement into an underground source of drinking water or an unauthorized zone through vertical channels adjacent to the injection bore.
2. One of the following methods must be used to evaluate the absence of significant leaks:
  - a. Pressure test with liquid or gas.
  - b. Monitoring of positive annulus pressure following a valid pressure test.
  - c. ~~Records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate.~~ Radioactive tracer survey.
  - d. ~~Spinner survey.~~ Any other test or method considered effective by the commission.
  - e. ~~Radioactive tracer survey.~~
3. One of the following methods must be used to establish the absence of significant fluid movement:
  - a. A log from which cement can be determined or well records demonstrating the presence of adequate cement to prevent such migration.
  - b. ~~The results of a~~ Radioactive tracer survey, temperature or log, noise log or any other test or method approved by the commission.

History: Effective November 1, 1982; amended effective May 1, 1990; July 1, 1996;\_\_\_\_\_.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

#### **43-02-05-12. REPORTING AND MONITORING REQUIREMENTS.**

1. The operator of an injection well shall meter or use an approved method to keep records and shall report monthly to the industrial commission, oil and gas division, the volume and nature, i.e., produced water, makeup water, etc., of the fluid injected, the injection pressure, and such other information as the commission may require. The operator of each injection well shall, on or before the fifth day of the second month succeeding the month in which the well is capable of injection, file with the director a sworn statement showing the amount of injection by each well upon forms furnished therefor, or

approved computer sheets. The operator shall retain all records required by the industrial commission for at least ~~five~~ six years.

2. Immediately upon the commencement or recommencement of injection, the operator shall notify the oil and gas division of the injection date.
3. The operator shall place accurate gauges on the tubing and the tubing-casing annulus. Accurate gauges shall also be placed on any other annuluses deemed necessary by the director.
4. The operator of an injection well shall keep the well and injection system under continuing surveillance and conduct such monitoring and sampling as the commission may require.
5. The operator of an injection well shall report any noncompliance with regulations or permit conditions to the director orally within twenty-four hours followed by a written explanation within five days. The operator shall cease injection operations if so directed by the director.
6. Within ten days after the discontinuance of injection operations, the operator shall notify the oil and gas division of the date of such discontinuance and the reason therefor.
7. Upon the completion or recompletion of an injection well or the completion of any remedial work or attempted remedial work such as plugging back, deepening, acidizing, shooting, formation fracturing, squeezing operations, setting liner, perforating, reperforating, tubing repairs, packer repairs, casing repairs, or other similar operations not specifically covered herein, a report on the operation shall be filed on a form 4 sundry notice with the director within thirty days. The report shall present a detailed account of all work done including the reason for the work, the date of such work, the shots per foot and size and depth of perforations, the quantity of sand, crude, chemical, or other materials employed in the operation, the size and type of tubing, the type and location of packer, the result of the packer pressure test, and any other pertinent information or operations which affect the status of the well and are not specifically covered herein.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 1994; July 1, 1996;

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General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

#### **43-02-05-14. AREA PERMITS.**

1. The commission, after notice and hearing, may issue a an area permit on an area basis, rather than for each well individually, provided that the permit is for providing for the permitting of individual injection wells if the proposed injection wells are:
  - a. ~~Described and identified by location in permit applications, if they are existing wells;~~

~~a b.~~ Within the same ~~well~~ field, facility site, reservoir, project, or similar unit in the same state;

~~b e.~~ Of similar construction;

~~c d.~~ Of the same class; and

~~d e.~~ Operated by a single owner or operator.

2. An area permits application shall specify include at least the following information:

a. The ~~area within which underground injections are authorized; and~~ name and address of the operator.

b. The ~~requirements for construction, monitoring, reporting, operation, and plugging for all wells authorized by the permit.~~ A plat depicting the area of review (one-quarter mile [402.34 meter] radius) and detailing the location, well name, and operator of all wells in the area of review. The plat should include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults, if known or suspected.

c. Appropriate geological data on the injection zone and the confining zones including geologic names, lithologic descriptions, thicknesses, and depths.

d. Estimated fracture pressure of the top confining zone.

e. Estimated maximum injection pressure.

f. Geologic name and depth to base of the lowermost underground source of drinking water which may be affected by the injection.

g. Proposed injection program.

h. List identifying all source wells or sources of injectate.

i. Quantitative analysis from a state-certified laboratory of a representative sample of water to be injected. A compatibility analysis with the receiving formation may also be required.

j. Legal description of the land ownership within and one-quarter mile adjacent to the proposed area permit.

k. Affidavit of mailing certifying that all landowners have been notified.

l. Representative example of landowner letter sent.

m. Schematic of the proposed injection system.

n. Schematic drawing of a typical proposed injection well bore construction.

3. ~~The An~~ area permit ~~may authorize~~ authorizes the ~~permittee~~ director to ~~construct and operate new~~ approve individual injection wells well permit applications within the ~~permit permitted area provided.~~ The application shall be on a form 14 provided by the commission and shall include at least the following information:
- a. ~~The permittee notifies the director when and where the new well has been or will be located~~ name and address of the operator of the injection well.
  - b. ~~The additional well meets the area permit criteria~~ surface and bottom hole location.
  - c. ~~The cumulative effects of drilling and operation of additional injection wells are acceptable to the director.~~ Average and maximum daily rate of fluids to be injected.
  - d. Existing or proposed casing, tubing, and packer data.
  - e. Plat depicting the area permit and one-quarter mile adjacent detailing the location of all anticipated injection wells and all current producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults, if known or suspected.
  - f. The need for corrective action on wells penetrating the injection zone in the area of review.
  - g. Location of the two nearest freshwater wells by quarter-quarter, section, township, and range within a one-mile radius and the dates sampled. A quantitative analysis from a state-certified laboratory of the samples must be submitted with the application or within 30 days of sampling. This requirement may be waived by the director in certain instances.
  - h. All logging and testing data on the well which has not been previously submitted.
  - i. Schematic drawings of the current well bore construction and proposed well bore and surface facility construction.
  - j. Sundry notice detailing the proposed procedure.
4. The director is authorized to approve individual injection well permit applications within an area permit provided:
- a. The additional well meets the area permit criteria.
  - b. The cumulative effects of drilling and operating additional injection wells are acceptable to the director.
- 4 5. If the director determines that any additional well does not meet the area permit requirements, the director may modify or terminate the permit or take enforcement action.

- § 6. If the director determines the cumulative effects are unacceptable, the permit may be modified.
7. Area and individual injection well permits may contain such terms and conditions as the commission deems necessary.
8. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit or any applicable rule or statute.
9. Before a permit for underground injection will be issued, the applicant must satisfy the commission that the proposed injection well will not endanger any underground source of drinking water.
10. No person shall commence construction of an underground injection well until the commission has issued a permit for the well.
11. Area and individual injection well permits are transferable only with approval of the commission.
12. Individual injection well permits may be modified by the commission.
13. Before injection commences in an underground injection well, the applicant must complete any needed corrective action on wells penetrating the injection zone in the area of review.
14. Individual injection well permits shall automatically expire one year after the date issued, unless the well is injecting or operations have commenced to complete the well as an injection well.
15. If the permitted injection zone is plugged and abandoned, the permit shall expire and be of no further force and effect.

History: Effective November 1, 1982; amended effective May 1, 1992;\_\_\_\_\_.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

**STRIPPER WELL PROPERTY DETERMINATION**  
**CHAPTER 43-02-08**

**43-02-08-01. DEFINITIONS.** The terms used throughout this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapters 38-08 and 57-51.1, except:

1. "Commercial quantities" means production exceeding in value current operating costs.
2. "Condensate recovered in nonassociated production" means a liquid hydrocarbon recovered from a well classified as a gas well by the commission.
3. "Maximum efficient rate" means the maximum economic rate of production of oil which can be sustained under prudent operations, using sound engineering practices, without loss of ultimate recovery.
4. "Operator" means any person who owns a fee interest or an interest in an oil and gas leasehold, and has the right to produce oil therefrom.
5. "Qualifying period" means any preceding consecutive twelve-month period beginning after December 31, 1972, that the qualified maximum total production from a property did not exceed the production levels as specified in subsection 2 of section 43-02-08-03.
6. "Well depth":

a. For a vertical or directional well means the lowest measured depth of the midpoint between the highest and lowest perforations (measured in feet from ground level the kelly bushing) producing from the pool during the qualifying period. In the event there is more than one vertical or directional well on a property producing from the same pool during the qualifying period, "well depth" means the average depth of the midpoints between the highest and lowest perforations lowest measured depths producing from the pool of all vertical and directional wells in the property.

b. For a horizontal well means the measured depth of the terminus of the horizontal lateral (measured in feet from the kelly bushing) producing from the pool during the qualifying period. In the event there is more than one horizontal well on a property producing from the same pool during the qualifying period, "well depth" means the average measured depth of the termini of the horizontal laterals producing from the pool of all of the horizontal wells on the property.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1994;\_\_\_\_\_.

General Authority  
NDCC 38-08-04(5)

Law Implemented  
NDCC 38-08-04(4)  
57-51.1-01

**43-02-08-02.1. PROPERTY DETERMINATION.** For purposes of this chapter, property will be determined by reference to the geographical boundaries of the right to produce crude oil as

such right existed on January 1, 1972, provided such right was in production in commercial quantities on that date. If such right was not in production in commercial quantities on January 1, 1972, the determination of property will be made by reference to the geographical boundaries of the right to produce crude oil when crude oil is first produced thereafter in commercial quantities. For purposes of determining what constitutes a property, the director shall recognize as separate properties the following:

1. A unit, where the unit is the aggregation of separate interests into a single right to produce. For the purposes of property determination, a unit means the total geographical area incorporated in a unitization agreement approved by order of the commission. In cases where a property has been unitized, portions of the property outside the unit boundary are separate properties.
2. Separate and distinct reservoirs, as defined by orders of the commission.
3. Noncontiguous tracts. (Tracts abutting solely at a corner are considered noncontiguous tracts.)
4. A single well, or any portion of a property which has been developed and produced separately. Any well or portion of a property previously qualified as a stripper well property may not be redesignated to be included in another property unless approved by the commission after notice and hearing or unless such property lies within a unitized common source of supply.

History: Effective September 1, 1987; amended effective May 1, 1992;\_\_\_\_\_.

General Authority  
NDCC 38-08-04(5)

Law Implemented  
NDCC 38-08-04(4)  
57-51.1-01

#### **43-02-08-03. DIRECTOR SHALL DETERMINE STRIPPER WELL PROPERTY STATUS.**

1. Upon receipt of an application for stripper well property determination, the director shall review the application, information, or comments submitted by any interested person and all relevant information contained in the books, files, and records of the commission.
2. Stripper well property status will be determined on the basis of the qualified maximum total production of oil from the property. In order to qualify production from a property as maximum total production, each oil-producing well on the property must have been maintained at the maximum efficient rate of production throughout the twelve-month qualifying period. A property meets the requirements of a stripper well property if the qualified maximum total production of oil from the property excluding condensate did not exceed the following:
  - a. Production from a well with a well depth of six thousand feet [1828.8 meters] or less did not exceed an average of ten barrels per day;

- b. Production from a well with a well depth of more than six thousand feet [1828.8 meters] but not more than ten thousand feet [3048.0 meters] did not exceed an average of fifteen barrels per day; or
  - c. Production from a well with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty barrels per day.
- 3. Within thirty days of the receipt of a complete application for stripper well property status, or a reasonable time thereafter, the director shall either grant or deny the application. ~~The application must be submitted to the commission within twelve months after the end of the stripper well property's qualification period.~~
- 4. If an application for stripper well property status is denied, the director shall enter a written determination denying the application and specify the basis for the denial. If an application for stripper well property status is granted, the director shall enter a written determination granting the application. A copy of the determination either granting or denying the application must be forwarded by the director by mail to the applicant and all other persons submitting ~~written~~ comments. It is the obligation of the applicant to notify and advise the state tax commissioner, all other operators in the property, and the purchaser of the crude oil of the determination of the director.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; July 1, 1996;\_\_\_\_\_.

General Authority  
NDCC 38-08-04(5)

Law Implemented  
NDCC 38-08-04(4)  
57-51.1-01



**WORKOVER PROJECTS**  
**CHAPTER 43-02-09**

**43-02-09-02. EXEMPTION FROM TAXES.** Production from a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production, upon which a workover project has been performed, is exempt from taxes imposed pursuant to North Dakota Century Code chapter 57-51.1 for twelve months beginning with the first day of the third calendar month after the completion of a workover project if:

1. The commission has received a notice of intention to begin a workover project in accordance with section 43-02-09-03.
2. A workover project is performed on the well.
3. The cost of the workover project exceeds sixty-five thousand dollars, or if the average daily production is increased at least fifty percent during the first two months after completion of the workover project, based upon a comparison to the average daily production for the latest six calendar months of continuous production prior to the filing of the notice of intention to begin a workover project.

For the exemption from the oil extraction tax for workover projects pursuant to North Dakota Century Code section 57-51.1-03, the reentry of a plugged and abandoned well is a workover project provided the cost of the operation exceeds sixty-five thousand dollars. ~~The application must be submitted to the commission within twelve months after the completion of the workover project.~~

History: Effective May 1, 1990; amended effective May 1, 1994; July 1, 1996;\_\_\_\_\_.

General Authority  
NDCC 57-51.1-03

Law Implemented  
NDCC 57-51.1-03

**CERTIFICATION OF HORIZONTAL WELLS, HORIZONTAL  
REENTRY WELLS, SHALLOW GAS WELLS, AND TWO-YEAR INACTIVE WELLS  
CHAPTER 43-02-11**

**43-02-11-01. DEFINITIONS.** The terms used throughout this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapters 38-08 and ~~57-51.1~~, except:

- ~~1. "horizontal reentry well" means a well that was initially drilled and completed as a vertical well which is reentered and recompleted as a horizontal well after March 31, 1995. A horizontal reentry well includes a vertical well classified by the industrial commission as a dry hole which is reentered and recompleted as a horizontal well after March 31, 1995.~~
- ~~2. "horizontal well" with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.44 meters].~~
- ~~3. "new well" means a well as defined under North Dakota Century Code section 57-51.1-02, that was spudded and completed after April 27, 1987, shallow gas, shallow gas zone, and~~
- ~~4. "two-year inactive well" means a well as defined under North Dakota Century Code section 57-51.1-01. A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well shall be as defined under North Dakota Century Code chapter 57-51.1.~~

History: Effective July 1, 1996; amended effective July 1, 2002; \_\_\_\_\_.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-03  
57-51-01

**43-02-11-02.1. APPLICATION TO CERTIFY AS QUALIFYING A HORIZONTAL WELL, HORIZONTAL REENTRY WELL, OR TWO-YEAR INACTIVE WELL.** Any operator desiring to certify a horizontal, horizontal reentry, or two-year inactive well as a "qualifying well" for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51.1 shall submit to the director an application for certification of a qualifying well. The operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether a well is a qualifying well and is entitled to the tax reduction and tax exemption provided in North Dakota Century Code sections 57-51.1-02 and 57-51.1-03 respectively.

History: Effective July 1, 1996; amended effective September 1, 2000; July 1, 2002; \_\_\_\_\_.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-03

**43-02-11-02.2. APPLICATION TO CERTIFY AS A SHALLOW GAS WELL.** Any operator desiring to certify a shallow gas well for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51 shall submit to the director an application for certification of the well. The operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the well qualifies and is entitled to the tax exemption provided in North Dakota Century Code section 57-51-02.4.

History: Effective \_\_\_\_\_.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51-01

**43-02-11-06. APPLICATION FOR TAX EXEMPTION FOR A SHALLOW GAS WELL.** The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well, if different.
2. The name and number of the well, and the legal description of the surface location of the well for which a determination is requested.
3. The date the well was spudded and its completion date.
4. The name and the depth to the bottom of the productive strata or formation.

If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

History: Effective \_\_\_\_\_.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-03

**43-02-11-0607. APPLICATION FOR TAX EXEMPTION AND REDUCTION FOR A TWO-YEAR INACTIVE WELL.** The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well, if different.
2. The name and number of the well and the legal description of the location of the well for which a determination is requested.
3. Monthly production during the two years prior to date of application.
4. An affidavit stating that all working interest owners of the property and all purchasers of the crude oil produced from the property have been notified of the application by certified or registered mail.

Test oil produced from a two-year inactive well prior to recompletion is exempted from the extraction tax. If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

History: Effective July 1, 1996; amended effective September 1, 2000;\_\_\_\_\_.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-03

**43-02-11-0708. BOOKS AND RECORDS TO BE KEPT TO SUBSTANTIATE REPORTS.** Any operator desiring to certify a new, horizontal, horizontal reentry, or two-year inactive well shall make and keep appropriate books and records for a period of not less than six years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Effective September 1, 2000; amended effective\_\_\_\_\_.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-03

**GEOPHYSICAL EXPLORATION REQUIREMENTS**  
**CHAPTER 43-02-12**

**43-02-12-04. EXPLORATION PERMIT - APPLICATION.**

1. Any person applying to the commission for an exploration permit must have a certificate to conduct geophysical exploration pursuant to subsection 3 of North Dakota Century Code section 38-08.1-03.1. A person may not commence geophysical exploration activities in this state without first obtaining an exploration permit from the commission. An application for an exploration permit must be submitted to the commission at least three business days before commencing operations and include the following:
  - a. The name, permanent address, and telephone number of the geophysical contractor and the geophysical contractor's local representative.
  - b. The name, permanent address, and telephone number of the drilling and hole plugging contractor, if different from the seismic contractor.
  - c. The name and address of the resident agent for service of process of the person intending to engage in geophysical exploration.
  - d. The bond number, type, and amount for the geophysical company.
  - e. The geophysical exploration method (i.e., shot hole, nonexplosive, 2D, or 3D).
  - f. The number, depth, and location of the seismic holes and the size of the explosive charges, if applicable.
  - g. The anticipated starting date of seismic and plugging operations.
  - h. The anticipated completion date of seismic and plugging operations.
  - i. A description of hole plugging procedures.
  - j. A description of the identifying marks that will be on the ~~hat or~~ nonmetallic plug to be used in the plugging of the seismic hole.
  - k. A preplot map displaying the proposed seismic source points and receiver lines and specifically identifying all source points that do not comply with section 43-02-12-05.
  - l. A fee of one hundred dollars.
2. The permitholder shall notify the commission at least twenty-four hours, excluding Saturdays and holidays, before commencing geophysical activity.
3. The permitholder shall immediately notify the commission of any revisions to an approved seismic permit.

History: Effective December 1, 1997; amended effective September 1, 2000;\_\_\_\_\_.

**43-02-12-05. DISTANCE RESTRICTIONS - SHOT HOLE OPERATIONS - NONEXPLOSIVE METHODS.** Seismic shot hole operations may not be conducted less than ~~one thousand three hundred twenty~~ six hundred sixty feet [~~402.34~~ 201.17 meters] from water wells, buildings, underground cisterns, pipelines, and flowing springs.

Non-explosive exploration methods may not be conducted less than three hundred feet [91.44 meters] from water wells, buildings, underground cisterns, pipelines, and flowing springs.

Variances may be granted to this section by written agreement between the permitholder and the ~~operator~~ owner of the ~~land~~ subject property and must be available to the director upon request.

History: Effective December 1, 1997; amended effective September 1, 2000;\_\_\_\_\_.

**43-02-12-06. NOTIFICATION OF WORK PERFORMED.** Within thirty days following the completion of geophysical exploration by any person within this state, such person shall file with the commission a seismic completion report in the form of an affidavit deposing that the seismic project was completed in accordance with chapter 43-02-12, and incorporating a postplot map displaying the actual source point location and the location of all undetonated (loaded) holes, blowouts, and flowing holes or any other problem holes the director deems necessary. If obtained by the contractor, the latitude and longitude of each source and receiver point shall be submitted to the commission to the nearest tenth of a second.

Any person plugging a seismic hole must submit a plugging report and an affidavit of plugging detailing the line number, shot point number, hole depth, drill type, hole condition (wet, dry), bentonite used (sacks, capsules), and the depth at which the surface plug was set, and all other information necessary to describe the conditions of the shot hole.

History: Effective December 1, 1997; amended effective September 1, 2000;\_\_\_\_\_.

**43-02-12-07. DRILLING AND PLUGGING REQUIREMENTS.**

1. Prior to commencement of any drilling or plugging operations, the director may require a field meeting with the geophysical contractor and subcontractors.
2. Except in those circumstances in which the director allows otherwise, all seismic shot holes must be plugged ~~the~~ same day as they were drilled and loaded. Any blown out shot holes must be plugged as soon as reasonably practicable, unless, upon application,

the director grants an extension which may not exceed ninety days. All seismic shot holes must be temporarily capped until final plugging.

3. If the number of drilling rigs on a proposed project exceeds the director's capacity to provide appropriate inspection, the director may limit the number of drilling rigs.
4. Bentonite materials used in seismic hole plugging must be derived from naturally occurring untreated, high swelling sodium bentonite which consists principally of the mineral montmorillonite.
5. A durable ~~nonrusting metal or plastic tag~~ nonmetallic plug must be set at a depth of approximately three feet [91.44 centimeters] below the surface of every shot hole, ~~and~~ The plug must be designed to fit the hole and shall be imprinted with the ~~name~~ mark of the operator responsible for the plugging, the mark of the permit holder, and its permit ~~the permitted project number~~.
6. Unless the contractor can prove to the satisfaction of the commission that another method will provide better protection to ground water and long-term land stability, seismic shot hole plugging shall be conducted in the following manner:
  - a. When water is used in conjunction with the drilling of seismic shot holes or when water is encountered in the hole, the shot holes are to be filled with coarse ground bentonite approximately three-fourths of one inch [19.05 millimeters] in diameter from the top of the charge up to a depth above the final water level. Cuttings shall be added from the top of the bentonite to the surface. All cuttings added above the nonmetallic plug shall be tamped.
  - b. When drilling with air only, and in completely dry holes, a plugging may be accomplished by returning the cuttings to the hole. A small mound must be left over the hole for settling allowance.
  - c. Remaining cap leads must be cut off below ground level and any drilling fluid or cuttings which are deposited on the surface around the seismic hole will be spread out in such a manner that the growth of natural grasses or foliage will not be impaired.
  - d. The existing cap leads must be cut off below ground level. Any markings including lath, pin flags, flagging or any other debris left on the project area, including the powder magazine, must be removed and lawfully disposed of.

History: Effective December 1, 1997; amended effective September 1, 2000;\_\_\_\_\_.

General Authority  
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Law Implemented  
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